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Courting Resilience

The National Green Tribunal, India

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Acronyms

CSO	Civil Society Organization
EIA	Environmental Impact Assessment
ENGO	Environmental Non-Governmental Organization
NGO	Non-Governmental Organization
NGT	National Green Tribunal

Summary

Confronted with a slew of environmental challenges, the number of green courts is growing worldwide. By according exclusive attention to environmental disputes, adjudication by these courts and tribunals is linking up democratic and ecological processes synergistically. This paper provides an analysis of how the National Green Tribunal (NGT) of India has enabled local publics, affected by the pollution of air, water, soil (and more), to mobilize and fight back in defence of their rights to a better environment.

The NGT has indeed been a remarkable attempt at courting social and ecological resilience. Its robustness and transformative power are buttressed by judicial and expert members, environment lawyers and activists pushing it to bolster its judgements further with "the force of law" in order to deliver justice beyond what has been achieved so far. The combination of civil society organizations, advocates and the NGT judges have catalysed resilience through legal actions that have made and remade regulatory procedures and monitoring institutions for improved environmental outcomes.

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Introduction

Confronted with a slew of environmental challenges, the number of green courts is growing worldwide. By according exclusive attention to environmental disputes, adjudication by these courts and tribunals is linking up democratic and ecological processes synergistically. Here I focus on the National Green Tribunal (NGT) of India that has enabled local publics, affected by the pollution of air, water, soil (and more), to mobilize and fight back in defence of their rights to a better environment.

The juridical making and remaking of social and ecological resilience in India traverses a huge terrain. It is enabled by statutory acts and global treaties, litigated by activists, civil society organizations, supported by environmental lawyers, arbitrated by judges, administered by state bodies and interpreted by citizens. Strikingly, the spearheading of the public interest in socio-environmental affairs has been taken on by the judiciary and more recently, by the NGT. Having said that, we have to recognize that it is the volume and nature of petitions by citizens' associations that have nudged the courts to act in this direction.

While the Indian judiciary's trail-blazing environmental jurisprudence has often led to its description as a prime environmental activist, the NGT is both a product and a producer of new transformative environmental outcomes. The breadth and the depth of suits brought before the NGT testify to the investment of local environmental associations in this arena. The documentation of such appeals affords a current account of those seeking environmental justice through the NGT and registers the diverse socio-environmental interests being pursued by citizens. Most cases at the NGT are initiated by local-level citizens' organizations and advocated by lawyers pleading this public's interest at reasonable costs.

Buttressed by sympathetic advocates and people's associations who draw attention to local environmental violations, the NGT's judicial actions have catalysed resilience by making and remaking regulatory procedures and monitoring institutions in their deliberations of the public interest. Further, since the Tribunal has expert members on board who play the dual role of scientists and judges, techno-scientists help both to comprehend issues emerging from contexts of present vulnerability and to envisage long-term actions that can make for ecological resilience. Bringing in scientists as members of a jury has certainly advanced the use of techno-scientific data by local publics and advocates in the assertion of environmental rights and wrongs.

The Tribunalization of Matters Environmental: The National Context

I start with a brief introduction to the NGT that was set up in 2010 by signposting the global context and the specific circumstances in India that led up to its creation. The outcome documents of two major international conferences, at Stockholm in 1972 and Rio in 1992, clearly urged for more judicial intervention in favour of environmental principles such as sustainable development, the precautionary principle, the polluter pays and intergenerational equity that were subsequently disseminated and adopted around the world. India was a signatory to these multilateral agreements as well, and these principles vitally resonated in the democratic and environmental forums dispersed across the country.

In addition, juridical developments within India in the 1980s had radically expanded the notion of "standing", that is, the ability to show sufficient connection to a matter to seek legal redress, to include any public-spirited citizen pleading a common cause. The case for mitigating vulnerability, expressed as a public interest, expanded to cover many domains but what concerns us here was its vitality in the sphere of environmental practice and jurisprudence. By extending the conception of who could appeal in the common interest to any affected citizen, a host of public-minded citizens came to have the legal standing to put forth the interests of disadvantaged groups for environmental protection. Such legal inclusiveness, for instance, enabled aggrieved villagers to secure their rights in village commons even when the official, representative village body at the local level did not join the dispute (Brara 2006).

What followed in the wake of the expanded notion of standing was a flood of litigation expressing citizens' concerns on environmental issues. Pleadings and judgements in pursuit of the public interest paved the way for a review of the right to life as inclusive of the right to a healthy environment for all citizens. Simultaneously, the citizen, in turn, was charged with the duty of protecting forests, rivers, lakes and wildlife and enjoined to show compassion to other living creatures.[1] Lately, provincial courts have begun to think about the rights of inanimate nature, such as rivers as well, going beyond the concern with human and animal rights.[2]

Beginning with a wealth of observations in the 1980s, the Supreme Court drew repeated attention to both the challenges posed by the burgeoning of environmental issues and lawsuits and the lack of scientific, technical expertise at its command that was vital to arrive at robust judgements. The increase in the volume of environmental suits had, in fact, led the Supreme Court to reserve Fridays exclusively for such cases. What followed was the creation of a National Environment Appellate Authority in 1997, staffed primarily by retired bureaucrats (Rosencranz et al. 2009). After disappointing results from this organization, it was realized that a new institution was needed, this time with more teeth and autonomy. As a result, the 186th Law Commission of India in 2003 recommended the formation of a new judicial body that would comprise both judicial and technical members.

In 2010, a tribunal with original jurisdiction, appellate authority and scientific expertise was instituted under the National Green Tribunal Act. It was a judiciary-driven reform and the progress of the NGT's formation was monitored by the Supreme Court (Amirante 2012; Ghosh 2012).

The NGT's constitution drew on the experience of similar bodies in Australia and New Zealand before attuning it to the Indian context (Rosencranz and Sahu 2009). The Tribunal was endowed with technical members and original jurisdiction on substantive matters to adjudge violations against seven environmental acts, concerned with water, land and air pollution, biodiversity and forest conservation.[3] These discrete acts were brought under the NGT's umbrella as part of a strategy that aimed at the better integration of environmental issues.

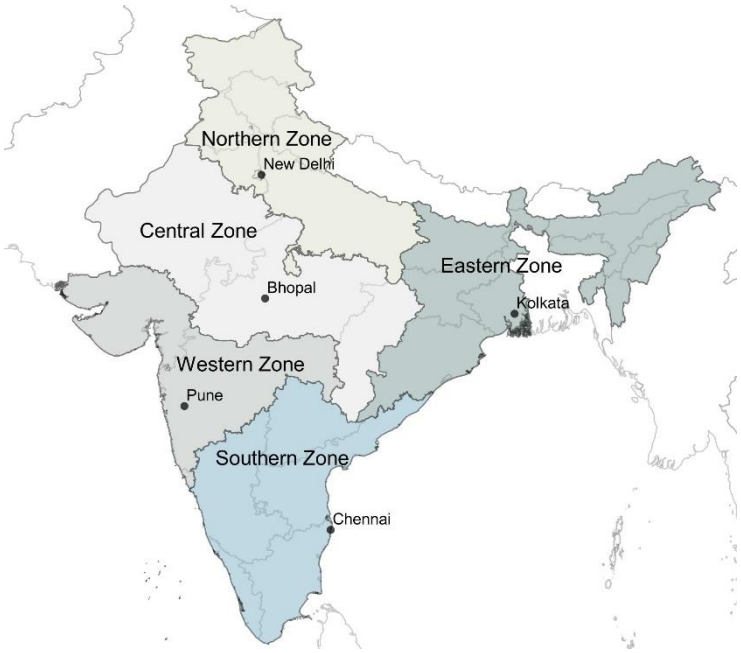
1 Article 51 A of the Indian Constitution.

2 The Uttarakhand High Court granted the Ganges and the Yamuna, the rights of juristic persons, a judgement which was, however, stayed by the Supreme Court.

3 The NGT's jurisdiction extends to cases falling under the following seven Acts: The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; and The Biological Diversity Act, 2002.

A tribunal is distinct from a court in more ways than one. Striking for my purposes here is that the NGT is a single-purpose body, equipped to review technical facts and to penalize violators. While its Principal Bench is located in the capital, New Delhi, the NGT's zonal benches are spread across four regions (figure 1). To facilitate legal access further, circuit benches periodically hold court closer to environmental hotspots as well. An appeal against a judgement of the Tribunal is maintainable before the Supreme Court.

Figure 1: Location of Principal and Zonal Benches of the National Green Tribunal



Source: Map produced by Dunja Krause 2018, based on GADM, Choudhary (2014) and NGT

The NGT: Analysing the Recent Initiative

I turn next to a range of informal partnerships that arose and were strengthened in the course of the NGT's functioning. These partnerships developed between single activists, environmental non-governmental organizations (ENGOs), lawyer-activists and the NGT; and between the NGT and different wings of the state, such as state pollution boards and scientific research institutes.

Local ENGOs comprised nearly 70 percent of the petitioners before the Tribunal. In the course of perusing the judgements, it became apparent that some of these ENGOs were